

27 May 2019

Kathleen Ryan
C/-Peter Waymouth
11 Bouverie Street
Dunedin 9010

Via email: pw@greentrees.co.nz

Dear Kathleen

RESOURCE CONSENT APPLICATION:

**LUC 2018-739
8 SCOTIA STREET
WAIKOUAITI**

The above application for resource consent to remove a scheduled tree group (G089) was processed on a publicly notified basis in accordance with Section 95 of the Resource Management Act 1991. The Hearings panel comprising Councillor's Aaron Hawkins (Chairperson) and Mike Lord, Community Board member Geraldine Tait and Independent Commissioner Sally Dicey heard and considered the application at a hearing held on 12 April 2019.

The Hearing was adjourned prior to the applicants Right of Reply. A minute was circulated from the panel chair requesting further assessment on overarching 2GP objectives and policies relevant to the proposal and a written review of the processing planner's recommendation. A written right of reply from the applicant was also requested. The written right of reply was provided on Wednesday 1 May 2019.

At the end of the public part of the hearing, the Committee, in accordance with Section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public.

A site visit was undertaken by the Hearings Committee prior to the hearing on 11 April 2019.

The Committee has **granted** consent to remove trees within Tree Group G089 on the site at 8 Scotia Street subject to conditions. The full text of this decision commences below with a consent certificate attached to this letter.

The Hearing and Appearances

The applicant Kathleen Ryan was represented at the hearing by Peter Waymouth (Consultant Arborist).

Council staff attending were:

John Sule (Committee Advisor), Lily Burrows (Processing Planner), Luke McKinlay (Urban Designer), Mark Roberts (Consultant Arborist) and Lauren McDonald (Governance Support Officer).

There were no submitters in attendance.

Procedural Issues & late Submission

Information provided by the applicant's consultant arborist after the date specified for provision of the applicant's expert evidence was considered and accepted by the Hearings Panel as it was not prejudicial to any party.

Principal Issues of Contention

The principal issues of contention are as follows:

- The trees on the site subject to District Plan protection under the Group listing,
- The significance of the risk associated with the tree group,
- The degree of adverse effects arising from removal of trees within the tree group and the effectiveness of the proposed mitigation,
- Appeals and weighting to be applied to the 2GP objectives and policies.

Summary of Evidence

Introduction from Processing Planner

Lily Burrows outlined the resource consent application to remove trees within the tree group G089 and the findings in her report. She identified the applicant's proposal was to remove 19 eucalyptus trees to the west of the Hawksbury Lagoon, and to retain the 9 eucalyptus trees which bordered the lagoon. Ms Burrows outlined her process for determining the extent of tree group protection and those trees likely to be within the group. Ms Burrows identified the 9 trees she considered likely to be protected as part of the tree group. She advised that trees not within the group could be removed without the need for a resource consent.

Ms Burrows identified that the proposal was a non-complying activity as it was lodged after the 2GP decisions were released. She noted that there was an appeal against the non-complying activity status for tree removal in the 2GP and the wording of the policy relating to the significance of risk from a tree or a tree group. These provisions were directly relevant to the Committee's consideration of the application and Ms Burrows noted that the appeals would reduce the weighting to be applied to the objectives and policies of the 2GP.

Ms Burrows indicated where she had relied on the advice of ecological, arboricultural and landscape experts and outlined her recommendation that consent be granted in part and that trees at the entrance to the site within the group be retained if they were considered safe.

Ms Burrows responded to a number of questions from the Committee clarifying her position and noting that she had placed a greater emphasis on the perception of safety in assessing impacts on health and safety than the experts looking at the risk from the trees. While noting that the Committee had to follow the statutory assessment process Ms Burrows noted that she considered that the expert advice indicated the best long term environmental outcome for the site was the protection of the 9 lagoon trees as habitat and a revegetation programme that enhanced biodiversity.

The Applicant's Case

Mr Weymouth outlined the tree removal proposal and outlined that the reasons for removal were primarily in relation to health and safety. Mr Weymouth also identified that he had undertaken STEM assessments of the trees on the site and in his view the trees to be removed to the west of the dwelling did not meet the 147 point threshold for inclusion on the schedule of significant trees.

Although Mr Waymouth had framed the application on the basis all the Eucalyptus trees within the site were protected he accepted the advice from Ms Burrows that complete protection of all the trees was not likely to be the case and the 9 trees along the lagoon edge (the Hawkesbury 9) were not part of the tree group and not subject to District Plan protection. He outlined the mitigation offered by the applicant.

In response to the Section 42A report that recommended the retention of the 3 Eucalyptus trees near the gate if they were safe he advised the Committee that if the pine trees were removed, the remaining Eucalyptus would be very exposed due to their form. He believed to be safe this group would need to be left with the 2 pines. Mr Waymouth advised the Committee that he was not able to confirm that these 3 Eucalyptus trees will continue to stand without the possibility of uprooting. Given the relatively low quality of the trees that would remain he did not support their retention.

Expert Advisors

My McKinlay, the Council's Urban Designer, outlined his advice on the visual amenity effects of the proposed tree removals and responded to questions from the panel. He considered the removal of trees would have a landscape and amenity impact, but the retention of the 9 Lagoon side trees would soften the impact of the removal until the new planting was established within 5 to 10 years. He noted the recommendation by Ms Burrows to retain the trees near the entrance gate, but he considered their removal would only have a minor impact.

Mr Roberts, the Councils Consulting Arborist, was questioned by the Committee on risk, establishment of mitigation planting, and the quality of the trees near the gate Ms Burrows had recommended be retained. He confirmed that there is a risk from the trees located close to the dwelling but that there would be lesser risk from trees further from the dwelling. He observed that the trees near the gate were not a significant risk in his opinion, but they were not specimens of any significance. He confirmed to the Committee that only the lagoon side trees warranted District Plan protection in his opinion.

Processing Planner's Review of Recommendation

Ms Burrows acknowledged the submissions from the applicant and their reasons for seeking consent to remove the tree. Ms Burrows accepted that while the trees at the front of the site were not a significant risk the expert advice was that they were not of high quality and would not meet the threshold for inclusion on the District Plan. Ms Burrows therefore altered her recommendation to recommend granting consent to the tree removal proposal in its entirety subject to conditions that protect the 9 lagoon edge trees and a proposed vegetation replanting programme to enhance biodiversity and landscape values. Ms Burrows noted the positive effects arising from the opportunity to protect the 9 lagoon side trees identified as significant and the mitigation planting offered by the applicant. Ms Burrows noted that she has found the proposal inconsistent with the policy framework of both plans. In the event the Committee considered the proposal was contrary to the policy framework she considered the proposal was a "true exception".

Applicants Right of Reply

Mr Waymouth confirmed the mitigation offered by the applicant for protection of the 9 lagoon side trees and revegetation of the site under a landscape plan prepared by suitably qualified landscape and ecological professionals. He indicated the planting would be completed within 1 year of completing removal operations.

He requested that the planner's recommendation that the proposal was a true exception be accepted.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions of the following chapters of the Dunedin City District Plan: 4 Sustainability, 8 Residential Zones, and 15 Trees. The relevant objectives and policies of the Proposed Plan (2GP) were considered including 2 Strategic Directions, 14 Manawhenua, 10 Natural Environment, 15 Residential and 7 Scheduled Trees and the statutory provisions considered included Part 2 of the Act. Regard was also given to the Regional Policy Statement for Otago.

Main Findings on Principal Issues of Contention

The Hearings Committee has considered the evidence heard, the relevant statutory and plan provisions, and the principle issues in contention. The main findings on the principle issues have been incorporated within the reasons discussed below.

Decision

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. In addition, a site visit was undertaken prior to the hearing that allowed the Committee to inspect the site and area. This assisted with consideration of the proposal and evidence. The Committee reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991.

*That pursuant to Section 34A(1) and 104B and after having regard to to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying activity** being the removal of significant trees within Tree Group G089 on the site at 8 Scotia Street, Waikouaiti, legally described as Lots 10, 11, 52 and 53 Blk IV Deeds 51 (Record of Title OT237/210).*

Reasons for this Decision

1. With respect to the proposal to remove significant tree group G089 the Committee considered the positions of the applicant, submitters, the Council's planner and the expert advice that was provided.
2. The Committee was disappointed that the tree group listing G089 did not clearly identify the trees that were protected under the District Plan and that this meant it had to make a decision on the extent of tree protection on the site. This should not be necessary and the Committee requested the tree group identification issue to be raised with the administrators of the District Plan so that consideration could be given to auditing the tree groups on the protection schedule to ensure similar issues did not arise in the future.
3. The Committee acknowledged the effort made by Ms Burrows to review protection information and identify the trees subject to protection under the operative and proposed District Plans. While it was difficult to be completely certain on the trees that are contained within the group the Committee accepted that on the balance of probabilities that the 9 Eucalyptus trees located along the lagoon edge were not protected under the G089 listing. It noted that these trees were identified by the relevant experts as being of higher values than the trees within the listed group and worthy of protection under the District Plan.

4. In its consideration of the objectives and policies the Committee noted that Ms Burrows had identified there were appeals on the 2GP that specifically related to matters they were considering. These appeals reduced the weight that could be applied to the more directive 2GP policies. The Committee noted that the appeal against the proposed non-complying activity status in the 2GP seeking to change its status to discretionary would be likely to impact on the directive wording of the policies if it was upheld. For example, the use of “avoid” in policy 7.2.1.2 may not be appropriate if a discretionary activity status was reinstated under the appeal. On that basis, the Committee accepted that it needed to temper the weight given to the direction to “avoid” significant tree removal unless there was a significant shading, significant risk or significant effects on public infrastructure.
5. In terms of the objectives and policies of the operative District Plan, the Committee noted that these were general in nature and primarily directed at tree protection. It therefore considered that the proposed removal of a protected tree group (G) would at least be inconsistent the relevant objectives and policies in the operative District Plan except that the proposal better provides for the overarching objective relating to trees which includes the maintenance of amenity and environmental quality. In relation to the objective and policies of the proposed Plan (2GP), which are more focused requiring consideration of risk, shading and infrastructure in assessing the merits of a removal proposal, it noted that the reasons within those policies for granting consent were partly applicable in this case. It noted that shading and risk were relevant issues in terms of Policy 7.2.1.2 but the shading from the tree group was not considered significant. Risk was an issue but whether this risk was significant was not agreed by the experts. However, the Committee placed less weight on the directive nature of these policies given the appeal on activity status and so felt a definitive determination of the significance of the risk was not necessary. In addition, the proposal was assessed as being consistent with the relevant strategic directions objectives and policies of the 2GP.
6. The Committee noted that the expert advice was that the effects for removal of the trees within the tree group and other eucalyptus trees on the site would be no more than minor if the 9 trees along the lagoon edge were retained and if a revegetation plan proposed by the applicant was effectively implemented. In relation to the time taken for the mitigation to be effective, the landscape advice provided by Mr McKinlay indicated that the retention of the 9 trees along the lagoon edge would lessen the amenity impact in the short term until the revegetation of the site could be established within 5 to 10 years.
7. The Committee noted the divergence in the position of the two experts on the level of risk with Mr Roberts indicating that the risk was likely to be lower than Mr Waymouth had advised. The Committee considered the risk was likely to be moderate rather than significant and that the risk was reduced for those trees located further away from the dwelling but there was unpredictability in the failure of limbs or trees. It noted the proximity of some of the trees to the dwelling meant that tree or limb failure could result in significant property damage even if the dwelling afforded some protection to the inhabitants. It noted that a glazed porch observed on the site visit would not provide a lot of protection. It also noted the advice that falling limbs had already caused damage to the dwelling and a tree within the group removed as it has developed a dangerous crack in its trunk. On that basis the risk posed by the tree could not be dismissed.
8. Having regard to the non-complying activity status of the application and the threshold test under Section 104D of the RMA. The Committee noted that the proposal at least made it

through the effects limb of the threshold test and therefore it could consider granting consent to the proposal.

9. The Committee also accepted the expert advice that the highest quality group of trees on the site were the 9 trees along the lagoon edge that were not protected and that the trees within the group G089 would not likely meet the 147 STEM threshold for inclusion on the significant tree schedule.
10. The Committee accepted the advice that the loss of amenity values from removal of the trees with group G089 was minor with the proposed mitigation in place. The adverse effects of removal are therefore considered acceptable by the Committee. The Committee acknowledged the consent process will provide for protection of the tree group along the lagoon edge that was identified as having greater significance and value than the protected tree group. Conditions are imposed to secure protection of the 9 trees and the Committee requests that the District Plan team are advised that these trees should be considered for inclusion on the schedule when the schedule is next reviewed.
11. The Committee notes that clear conditions regarding the planned revegetation mitigation are important to securing the environmental enhancement promoted in the application. Expert landscape and ecological input into the development of a replanting plan is necessary to ensure the mitigation is effective in enhancing amenity and biodiversity values. It also notes that monitoring should be scheduled to allow for an initial implementation check and then a later check to ensure adequate ongoing maintenance of the plantings.
12. The Committee noted it is charged with consistent administration on the District Plan rules when it determines the outcome of consent applications of this type. Granting consent to this application would mean that it would have to treat other applications in the same way. It noted that a decision to grant consent therefore may have implications for the assessment of future applications. The Committee considers that the proposal it has considered under this consent is a "true exception". In this case there are an unusually large number of large trees on a large residential site adjoining a lagoon which is of significant conservation value. Inexplicably in this case the District Plan protection does not extend to the 9 lagoon side trees that the experts have identified as being the most valuable group of trees on the site. These trees are providing amenity and habitat and are retained and protected via a condition of consent as mitigation. Their retention in combination with the proposed revegetation plan is an exceptional level of mitigation. The Committee also notes the presence of appeals had reduced the weighing it was able to give to the more directive 2GP objectives and policies and any precedent implications are likely to only apply until the appeals are resolved.
13. The Committee considered granting the consent to remove G089 would be consistent with overall strategic objectives on the 2GP and the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources with conditions to secure mitigation in place.

Right of Appeal

Pursuant to Section 120(1A) of the Resource Management Act 1991, no right of appeal to the Environment Court against the whole or any part of this decision exists for the following:

- (a) *A boundary activity, unless the boundary activity is a non-complying activity;*
- (b) *A subdivision, unless the subdivision is a non-complying activity;*
- (c) *A residential activity, unless the residential activity is a non-complying activity.*

(Refer Section 87AAB of the Act for definition of “boundary activity”, and refer to Section 95A(6) for definition of “residential activity”.)

For all other applications, in accordance with Section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received.

The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
Christchurch Mail Centre
Christchurch 8013

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicant(s).
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Commencement of Consent

As stated in Section 116 of the Resource Management Act 1991, this consent will only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a determination of the Environment Court states otherwise.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Aaron Hawkins', with a stylized flourish at the end.

Aaron Hawkins
Chair
Hearings Committee

Consent Type: Land Use Consent

Consent Number: LUC-2018-739

Purpose: Removal of trees within Significant Tree Group G089.

Location of Activity: 8 Scotia Street, Waikouaiti

Legal Description: Lots 10, 11, 52 and 53 Blk Deeds 51 (Computer Freehold Register OT237/210).

Lapse Date: 27 May 20244, unless the consent has been given effect to before this date.

Conditions

- 1. The proposal shall be undertaken in general accordance with the relevant details and information submitted with resource consent application LUC-2018-739 received by the Council on 4 December 2018, except where modified by the following conditions.*
- 2. The 9 Eucalyptus trees (numbered as 20e and 28e in Appendix 1) located along the edge of the Hawksbury Lagoon are to be retained on the site to mitigate the effects of tree removal. Any future pruning of the 9 trees to be retained on the site must be undertaken by a suitably qualified person to a specification certified by the Resource Consents Manager prior to any pruning work being commenced.*
- 3. A Landscape Plan is to be prepared for revegetation of the area of the site occupied by the 19 trees identified in the consent application to be removed. The plan is to be prepared by a suitably qualified landscape architect in consultation with a suitably qualified ecologist and is to be certified by the Resource Consents Manager prior to any tree removal work commencing. The planting plan must include the botanical name, numbers, size at planting, planting spacings and the mature height of all proposed planting. Maintenance and pest control measures are to be included in the plan to ensure effective establishment of the planting.*
- 4. The plantings used to give effect to the Landscape Plan must include Otago coast eco-sourced, locally appropriate species to ensure that the trees planted are the most locally appropriate for long term biodiversity and amenity enhancement.*
- 5. The planting required under the certified landscape plan must take place as soon as practicable after the removal of the eucalyptus trees and /or within the first growing season and maintained in accordance with the landscape plan thereafter. Any dead or moribund trees are to be replaced as required and the removed eucalyptus trees must not be allowed to regenerate from the stumps.*
- 6. The consent holder shall advise Resource Consent Monitoring team by email to rcmonitoring@dcc.govt.nz of the date that trees within the tree group G089 are to be removed. The advice shall be provided to the Council at least five (5) working days prior to the removal of the tree.*

7. *Once tree removal is commenced it shall be completed without undue delay.*
8. *All waste generated by the pruning works shall not cause a nuisance and shall be suitably disposed of within 14 days of the completion of the pruning works.*
9. *The person exercising this consent shall take all reasonable measures to ensure the use of machinery for the removal of trees within tree group G089 shall be limited to the times set out below and shall comply with the following noise limits (dBA);*

Time Period	Weekdays		Saturdays	
	(dBA)		(dBA)	
	Leq	L _{max}	Leq	L _{max}
0730-1800	75	90	75	90
1800-2000	70	85	45	75

Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803: 1999 Acoustics – Construction noise. No work is undertaken on Sundays or Public Holidays nor between 8.00pm to 7.30am Weekdays or Saturdays.

10. *To ensure the safety of road users during the tree removal process temporary traffic management shall be in place as necessary during removal or pruning works.*

Advice Notes

1. Please check with the Council's Building Control Office, Development Services, to determine the building consent requirements for the work.
2. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
3. Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
4. It is the consent holder's responsibility to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.

5. This consent will lapse after a period of five years from the date of granting of this consent. This period may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.

Issued at Dunedin on 27 May 2019

A handwritten signature in black ink, appearing to read 'Aaron Hawkins', with a stylized flourish at the end.

Aaron Hawkins
Chair
Hearings Committee

Appendix 1 – 8 Scotia Street Trees

Simplified Map of 40 x DCC listed Eucalyptus sp. trees within 2 adjoining groups at 7 & 8 Scotia St, Waikouaiti, Otago designated as G088 & G089 05/11/18

